POLICE DEPARTMENT CITY OF NEW YORK

October 21, 2016

MEMORANDUM FOR: Police Commissioner

Re: Detective Elvin Gashi
Tax Registry No. 936041
Gang Squad Bronx
Disciplinary Case No. 2016-15188

Charges and Specifications:

1. Said Detective Elvin Gashi, while assigned to the Bronx Gang Squad, on or about and between November 19, 2013 and August 12, 2014, conducted multiple inquiries on Department computers not related to official Department business.
P.G. 219-14, Page 1, Paragraph 2 – DEPARTMENT PROPERTY

Appearances:

For the Department: Jaime Moran, Esq. & Rachel Grinspan, Esq.
Department Advocate's Office
One Police Plaza
New York, NY 10038

For the Respondent: Philip Karasyk, Esq.
Karasyk & Moschella, LLP
233 Broadway-Suite 2340
New York, NY 10279

Hearing Date:
August 16, 2016

Decision:
Guilty

Trial Commissioner:
DCT Rosemarie Maldonado

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on August 16, 2016. Respondent, through his counsel, entered a plea of Not Guilty to the subject charge. The Department called Sergeant Jeffrey Lauria and Sergeant Eugene McHugh as witnesses. Respondent testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

After reviewing the evidence presented at the hearing, and assessing the credibility of all witnesses, I find Respondent Guilty of the charged misconduct.

FINDINGS AND ANALYSIS

At issue is whether Respondent engaged in misconduct by using Department databases to conduct checks on multiple family members. The following facts are not in dispute. Respondent was assigned to Bronx Gang Squad in August 2013. On October 31, 2014, IAB received information that Respondent had accessed databases for non-Departmental purposes. As a result, Sergeant Jeffrey Lauria, IAB Group 41, audited Respondent's Omni and warrant log searches. The audit revealed that Respondent had searched for:

- Relative "P" on the warrant log and the Omni database on December 2, 2013.
- Relative "X" on the warrant log on December 2, 2013 and on the Omni database on February 3, 2014.
- Relative "B" on the warrant log on November 19, 2013 and on the Omni database on August 12, 2014.

On February 3, 2014. Respondent also searched the warrant database with a NYSID number assigned to X. (DX 1, 2, 3, 4, 5; Tr. 10,16-22, 57)[1]

Respondent admitted to conducting these searches without first consulting a supervisor but argued that he did so for enforcement purposes; specifically, to assist in the apprehension of a relative who he believed was committing burglaries and to assess two relatives who eventually registered as confidential informants ("CIs"). (Tr. 58-59, 64-68, 75, 81-88, 91)

Sergeant Lauria confirmed that relative B was registered as a confidential informant in November 2013 and that her handler was Sergeant Garcia, the Field Intelligence Officer for Bronx Gang Squad. Lauria recalled that in an interview, Sergeant Garcia told him that Respondent had introduced him to B in November 2013 and had facilitated her registration. When Sergeant Garcia had difficulties getting in contact with B, he more than once reached out to Respondent and asked him to contact her on his behalf. Sergeant Lauria agreed on cross-examination that he was unaware of any information with regard to B's activities that was leaked or compromised. (Tr. 24-25, 28-33)

Sergeant Lauria agreed that X was also activated as a confidential informant in 2013 and that his assigned handler was Sergeant Capper. Sergeant Capper told Sergeant Lauria that he had no relationship with Respondent and that he did not recall Respondent contacting him about X. Sergeant Capper, however, did recall "someone from Bronx Gang" contacting him regarding X's SAFETNet designation in March 2014. Sergeant Lauria noted that this timeframe coincided with Respondent's search of X's information.

[1] Lauria's audit also showed Respondent searched X in the warrant database on March 17, 2014. However, he stated that there were "some statements that that particular search was conducted pursuant to a stop." As such, that search was not deemed improper. (Tr. 22-23)

Sergeant Lauria further explained that confidential informants are registered into the database by their handlers and if "someone else [subsequently] tries to register them in that database, a conflict will exist and that person will need to contact the person who owns the SAFETNet." Sergeant Capper did not release the SAFETNet designation. (Tr. 25-27)

Respondent's supervisor during the relevant time period, Sergeant Eugene McHugh, also testified. He explained that when a member of the Bronx Gang Squad wanted to register a confidential informant, the officer would first have to notify a supervisor. The subject would then be interviewed by the supervisor and the officer to determine credibility. (Tr. 36-37) If the individual was deemed credible, paperwork and computer checks in various Department databases would be conducted. (Tr. 38-40, *see* DXs 6, 7) That information, he explained, would be forwarded to a higher ranking supervisor for approval. (Tr. 40-42)

Sergeant McHugh further testified that he does not recommend that officers sign up relatives as confidential informants because of the potential for a conflict of interest. (Tr. 42) Though he agreed there was no firm policy against it, he had never heard of an officer doing so. (Tr. 45, 49-50, 54) Sergeant McHugh testified that Respondent did not ask permission to conduct these computer inquiries on his relatives nor did he convey his intent to register them as confidential informants. (Tr. 43) He also did not recall Respondent ever specifically referencing B or X to him. (Tr. 50-51)

On cross examination, Sergeant McHugh agreed that he considered Respondent to be an active detective who had the best interest of the Department in mind and that he never had cause for concern about the manner in which Respondent conducted himself.

(Tr. 48) He also agreed that he never, at any point, learned of Respondent disclosing confidential Department information to unauthorized persons or compromising any investigations. (Tr. 49)

Respondent provided additional details regarding the circumstances surrounding these computer inquiries. He explained that B was a relative who had reached out to him on November 19, 2013 because she was frustrated with her brother's drug use. She told Respondent that she knew where he bought illegal substances and that "she wanted to ... close those places down." Respondent offered to help her register as a confidential informant, but told her that before inquiring further he would have to "see if you have any warrants ...." After checking her name in the warrant database, he informed B that he would locate a handler to register her as a confidential informant to "help the family and also help yourself." (Tr. 58-59)

Respondent explained that, at that time, he was new to the Gang Squad and felt embarrassed asking other officers to sign his relative up. However, he found Sergeant Garcia, the Field Intelligence Officer, to be approachable and friendly. Though Garcia was not his direct supervisor, he approached him and explained the situation. According to Respondent, Garcia said he would "gladly" sign B up and "everything would be confidential." (Tr. 59-60) On November 25, Respondent accompanied Garcia to meet B near the 52 Precinct and she signed her papers. He documented this meeting in his memo book. (Tr. 61-62, RX A)

When asked why he conducted a search for B on August 12, 2014, he explained: "the only logical reason why I would run her name is if Sergeant Garcia would ask me to reach out to her; in most cases she would acknowledge right away. There must have

been a time where she wasn't responding to me or Sergeant Garcia. So I just ran her name to see if she got in trouble. It was in good faith . . . I was concerned why she is not responding." (Tr. 64-65, 86-87) He conceded, however, that Garcia never asked him to run B's name. (Tr. 87)

As to his searches of P and X, Respondent explained that as far back as 2011, every time his family had an event a relative's home would be burglarized. P was the "main suspect" because he never attended family gatherings and he had heard stories that P was "going around burglarizing" other locations. Because Respondent was "frustrated" that P had not been apprehended, on December 2, 2013, he decided to check his arrest and warrant history.[2] (Tr. 65-66, 83-84) Respondent acquiesced that he had not been assigned to investigate those burglaries and that some had occurred outside the confines of New York City. (Tr. 84-85)

Respondent's searches revealed that on a few occasions, P had used the name of his brother, X, when he was arrested. This led Respondent to believe X might also be involved in the burglaries so he checked to "see if [X] ha[d] any active warrants or if he is doing the burglaries." Respondent insisted that the only reason he ran the names was to "see if I could help apprehend him." (Tr. 66, 90-91)

Respondent again searched X on February 3, 2014, a day or two after X had unexpectedly stopped by his father's home. During the visit, X told Respondent he knew of delis that were illegally selling pills. Respondent told him that he would try to have him signed up as a confidential informant. Respondent explained that he was "new in gang and ... wanted to ... get search warrants, get CIs with my partner, and just be active and improve...." Because Respondent's partner, was not at work the following day,

[2] According to Respondent, P was ultimately arrested for burglary and is presently incarcerated. (Tr. 66-67)

Respondent ran X's name in the Omni database to get his "paperwork started." (Tr. 67-68, 85, 92) He recalled learning about "something in Connecticut" that disqualified X from registering. (Tr. 92) He advised X to "to take care of" the issue. (Tr. 67-68, 93-94) Respondent next saw X on March 15, 2014 at a relative's wake. X told Respondent that his record had been cleared. Respondent recalled saying that his partner could "start signing you up." When Respondent returned to work on March 17, 2014, the SAFETNet database showed that X had already been assigned as a confidential informant to Sergeant Capper. Respondent reached out to the sergeant to determine whether he was still using X. Sergeant Capper replied that he was working on a search warrant with X and could sign him over after execution. (Tr. 68-72)

On cross-examination, Respondent agreed that, both in the Academy and when he transferred to Bronx Gangs, he was trained to only conduct computer inquiries for official Department business. He also stated that, on other occasions when signing up confidential informants, he followed the Patrol Guide procedure by first notifying his supervisor and participating in an interview with the supervisor and the subject before starting any paperwork or running any checks. (Tr. 76-80)

The Patrol Guide is explicitly clear that when utilizing Department computers, members of the service are obligated to "make only official inquires, which relate to official business of the Department." P.G. 219-14, p.1, para 2. This policy exists to "maintain the integrity and security of the Department's computer systems and to minimize the potential for misuse by . . . unauthorized access to available data." For the following reasons, I find that Respondent's searches violated this policy and constituted misconduct.

Respondent's hunch that relative P or X might have burglarized the homes of family members did not justify or legitimize the charged computer searches. First, Respondent was not assigned to investigate his relative's criminal activities and did not even know whether P and X were under investigation. Second, Respondent acted on his own speculation about what amounts to a personal matter affecting his family. Although that matter involved potential criminality, testing speculation via a Department database, without regard to established safeguards and procedures, is ripe for abuse.

Likewise, Respondent's searches to ascertain whether B and X were eligible to work as confidential informants was not sanctioned. The Patrol Guide clearly lays out that when an officer establishes a relationship with an informant who proposes to offer information, the officer must immediately notify a supervisor.[3] The supervisor and the officer must then, in this specific order:

- Interview the prospective informant
- Prepare Confidential Informant Registration Request and Registration Request Supplemental forms
- Conduct computer checks listed on the Confidential Informant Computer Database Checks form

P.G. 212-68, pp.1-2, para. 1-5.

In running the checks before he even notified a supervisor of his intent to have his relatives registered as informants, Respondent circumvented established procedures and ignored important safeguards that are in place to protect highly sensitive information. As such, even if the purported purpose of these searches ultimately related to police work, at the time they were conducted, the computer searches were not done pursuant to "official Department business."

[3] The Patrol Guide states that in commands with a Field Intelligence Officer (FIO), that officer may perform the duties of the supervisor outlined in the confidential informant procedure. Sergeant Garcia, who Respondent approached about signing up B, was the FIO in Respondent's command. However, Respondent conducted the computer searches without first informing Garcia.

In making this finding I note that the Department's computer database restrictions exist to protect the privacy of individuals and to preserve the integrity of Department investigations. Officers have access to an extraordinary amount of information about private citizens and the potential for that information to be misappropriated is great. Even if Respondent acted with good intentions and there is no evidence that he divulged any information, this tribunal cannot set a precedent that would allow officers to believe they have unfettered access to highly sensitive information provided their motives are good. Accordingly, Respondent is found Guilty as charged.

PENALTY RECOMMENDATIONS

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent was appointed to the Department on January 10, 2005. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

The Department has requested a penalty of ten (10) vacation days. In support of this recommendation, the Department Advocate cited three recent cases where an identical penalty was imposed. In *Case No. 2014-11843* (Nov. 10, 2015), a ten-year detective with no disciplinary record forfeited ten (10) vacation days for making five unauthorized computer inquiries. The other cited cases were negotiated settlements. In *Case No. 2013-8841* (June 10, 2014), a twenty-year police officer negotiated a penalty of ten (10) vacation days for conducting one arrest history check that was unrelated to official Department business. Finally, in *Case No. 2013-9678* (Nov. 6, 2014), a three-

year officer with no disciplinary record forfeited ten (10) vacation days for accessing Department records that were unrelated to her assignment.

A penalty of ten vacation days has also been deemed reasonable where an officer conducted unauthorized computer inquiries in addition to other misconduct. *See Case No. 2015-13565* (Nov. 10, 2015) (Eleven-year police officer with no prior disciplinary history negotiated a penalty of ten (10) vacation days for failing to make proper notifications, conducting a computer inquiry unrelated to Department business, using a lieutenant's confidential password to conduct two improper inquiries on a Mobile Digital Terminal, and failing to make complete and accurate Activity Log entries); *Case No. 2014-11865* (May 28, 2015) (Seven-year sergeant with no prior disciplinary history negotiated a penalty of ten (10) vacation days for using Department computers to conduct unauthorized inquiries in the OMNI system on two occasions and failing to notify IAB that he was the subject of a criminal complaint). It should also be noted that on at least one occasion, the Police Commissioner approved a lesser penalty for computer misuse. In *Case No. 2013-10610* (Sept. 8, 2014), a four-year police officer with no prior disciplinary record negotiated a penalty of five (5) vacation days for wrongfully utilizing another officer's confidential access code to make six inquiries unrelated to official Department business.

Here, Respondent has no formal history of prior computer misuse and, in fact, no prior disciplinary history whatsoever. He conducted the searches using his own computer password and testified candidly about doing so. There is also some support in the record that Respondent conducted the B and X searches, at least in part, to seemingly ascertain their eligibility to become CIs. I am troubled, however, that Respondent developed a

pattern of ignoring Department procedures by making computer inquiries about third parties he thought might be burglarizing family homes. Although involving potential police work, these searches were more personal in nature. Accordingly, I recommend that Respondent's penalty be the forfeiture of ten (10) vacation days.

Respectfully submitted,

Rosemarie Maldonado
Deputy Commissioner Trials

APPROVED

JAN 23 2017

JAMES P. O'NEILL
POLICE COMMISSIONER

POLICE DEPARTMENT CITY OF NEW YORK

From: Deputy Commissioner Trials

To: Police Commissioner

Subject: CONFIDENTIAL MEMORANDUM
DETECTIVE ELVIN GASHI
TAX REGISTRY NO. 936041
DISCIPLINARY CASE NO. 2016-15188

Respondent was appointed to the Department as a Police Officer on January 10, 2005, after having served as a Police Cadet from June 1, 2001 to January 9, 2005. His three most recent performance evaluations were 4.5 overall ratings of "Extremely Competent/Highly Competent" in 2014, 2015 and 2016. He has four medals for Excellent Police Duty. Respondent has no prior disciplinary history.

[redacted]

For your consideration.

Rosemarie Maldonado
Deputy Commissioner Trial